Case	8:24-ap-01163-SC Doc 1 Filed 12/19/24 Main Document Page	Entered 12/19/24 15:52:10 Desc e 1 of 13					
1 2	Robert P. Goe – State Bar No. 137019 Charity J. Manee – State Bar No. 286481 GOE FORSYTHE & HODGES LLP						
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6	Attorneys for Official Committee of Unsecured Creditors						
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9	UNITED STATES BAN						
10	CENTRAL DISTRICT OF CALIFO	DRNIA - SANTA ANA DIVISION					
11	In re:	Case No. 8:22-bk-12142-SC					
12   13	2 <sup>ND</sup> CHANCE INVESTMENT GROUP, LLC,	Chapter 11 Case					
14	Debtor and Debtor in Possession.	Adv. Case No.: 8:24-apSC					
15		COMPLAINT FOR:					
16	OFFICIAL COMMITTEE OF UNSECURED CREDITORS,	1) AVOIDANCE OF TRANSFERS					
17	Plaintiff,	PURSUANT TO 11 U.S.C. § 544(b) AND CAL. CIV. CODE §§					
18	-VS-	3439.04(a)(2), 3439.05; 2) AVOIDANCE OF TRANSFERS					
19	WENDY CARILLO CORPORATION, RAYSHON ANDREW FOSTER, an individual,	PURSUANT TO 11 U.S.C. § 548(a)(1)(B);					
20	SONJA FOSTER, an individual and DOES 1-10,	3) AVOIDANCE OF TRANSFERS PURSUANT TO 11 U.S.C. § 544(b)					
21		AND CAL. CIV. CODE §§					
22	Defendants.	3439.04(a)(1); 4) AVOIDANCE OF TRANSFERS					
23		PURSUANT TO 11 U.S.C. § 548(a)(1)(A);					
24		5) RECOVERY OF AVOIDED TRANSFERS PURSUANT TO 11					
25		U.S.C. § 550; and 6) DISALLOWANCE OF CLAIMS					
26		PURSUANT TO 11 U.S.C. § 502					
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The Official Committee of Unsecured Creditors of the bankruptcy estate of 2<sup>ND</sup> Chance Investment Group, LLC ("Debtor"), and Plaintiff in this adversary proceeding ("Committee" or "Plaintiff"), respectfully alleges as follows:

#### SUBJECT MATTER JURISDICTION AND VENUE

- This adversary proceeding arises in and relates to the Debtor's pending chapter 11 bankruptcy case entitled In re 2<sup>nd</sup> Chance Investment Group, LLC., Case No. 8:22-bk-12142-SC ("Bankruptcy Case").
- 2. On December 21, 2022 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing the Bankruptcy Case.
- 3. This Court has jurisdiction to adjudicate the issues raised in this adversary proceeding under 28 U.S.C. § 1334.
- 4. This action is a core proceeding under 28 U.S.C. § 157(b). Pursuant to Federal Rule of Bankruptcy Procedure 7008, Plaintiff consents to the Bankruptcy Court entering final a judgment and/or order.
- 5. This adversary proceeding involves property worth more than \$1,000 and does not involve a consumer debt. Venue in this judicial district is appropriate under 28 U.S.C. §§ 1409(a) and/or (c) because the Bankruptcy Case is pending in the Central District of California.
- To the extent Plaintiff asserts claims under 11 U.S.C. § 544, Plaintiff asserts that there exists in this case one or more creditors holding unsecured claims allowable under 11 U.S.C. § 502 or not allowable under 11 U.S.C. § 502(e), who can avoid the prospective transfers as set forth hereinafter under California or other applicate state or federal law.

#### II. THE PARTIES

7. Plaintiff was appointed as the Creditors' Committee on February 6, 2023. Pursuant to the Bankruptcy Court's Order Approving Stipulation Between Debtor and the Official Committee of Unsecured Creditors Granting the Committee Standing to Pursue Certain Avoidance Actions on Behalf of the Estate entered on March 22, 2023 in the Bankruptcy Case at Docket Entry No. 77, the terms of which were incorporated into the Debtor's First Amended Liquidating Plan as Modified [Docket No. 296 in the Bankruptcy Case] (the "Plan"), which was

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- 8. Plaintiff brings this action solely for the benefit of the estate created by the liquidating trust formed pursuant to the Plan and Confirmation Order, and the beneficiaries thereof, which includes the Debtor's creditor body.
- 9. By virtue of Plaintiff consisting of a committee of creditors, Plaintiff may not have personal knowledge of many of the facts alleged in this Complaint and, therefore, where appropriate, alleges certain facts on information and belief. Plaintiff reserves its right to amend this Complaint to allege additional claims against the Defendants (defined below) and to challenge and recover transfers made to or for the benefit of the Defendants in addition to those transfers alleged in the Complaint.
- 10. On and before the Petition Date, and continuing to the present, on information and belief, at all times relevant to this complaint, Defendant WENDY CARILLO CORPORATION ("WCC") was a business entity registered to do business in the State of California. Plaintiff is further informed and believes that WCC was located in Moreno Valley, California.
- 11. Defendant Rayshon Foster ("R. Foster") is an individual and, according to the Debtor's List of Equity Security Holders [Docket No. 1 in the Bankruptcy Case at page 10 of 54], is the sole member of the Debtor and at all times was a person in control of the Debtor.
- Defendant Sonja Foster ("S. Foster") is or was, at all times relevant to this 12. Complaint, the spouse of R. Foster (together, the "Fosters") and, upon information and belief, was a person in control of the Debtor. Additionally, notwithstanding the Debtor's filed List of Equity Security Holders, the Debtor asserted in filings in the Bankruptcy Case [Docket Nos. 268 and 269]

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that S. Foster is a 48% owner of the Debtor.

13. WCC and the Fosters shall from hereon, at times, collectively be referred to as the "Defendants."

#### III. GENERAL ALLEGATIONS

- 14. The allegations contained in paragraphs 1-13, inclusive, are re-alleged and incorporated herein by this reference, as though set forth in full.
- 15. During the four years prior to the Petition Date, and specifically during the months of April, May, June and August 2022, the Debtor was caused to make serial transfers funds directly to WCC in the aggregate sum of \$115,000 (collectively, the "Transfers").
- 16. The Transfers were transfers of money from the Debtor's operating bank account maintained with East West Bank ("EWB Account").
- 17. An itemized listing of the Transfers, including details describing salient aspects of each individual transfer (dates, amounts), is attached hereto as Exhibit "1" and is incorporated herein.
  - 18. WCC received the Transfers.
- 19. Plaintiff is informed and believes that, during the four years leading up to the Petition Date, the Fosters caused the Debtor to make the Transfers for their personal financial benefits. The Transfers were not made for any legitimate business purpose of the Debtor. Indeed, WCC is not listed as an investor or lender of the Debtor and does not appear to have an existence as an operating service business at any point in time. Moreover, Plaintiff is informed and believes that WCC was formed or made its formation filings with the California Secretary of State on April 8, 2022 and existed for fewer than three (3) years before it was terminated.
- 20. R. Foster has admitted to using the Debtor's funds and property to pay expenses and operational costs of non-Debtor entities which he and/or S. Foster owned, as well as using Debtor's funds to pay for personal expenses and expenditures of the Fosters.
  - 21. The Transfers were made directly to the WCC for the benefit of the Fosters.
- 22. Plaintiff is informed and believes that the Transfers were intended to disguise the Fosters' plan to strip the Debtor of its assets and hide the value of those assets or money under

third party names in order to defraud creditors by siphoning assets of the Debtor and using those for the personal benefits of the Fosters or other entities they owned, as well as to hinder, delay and avoid paying Debtor's genuine creditors.

23. Upon information and belief, at all times relevant to this Complaint, creditors of the Debtor (holding unsecured claims allowable within the meaning of Sections 502 and 544(b) of the Bankruptcy Code) existed that could have avoided the Transfers described herein under applicable state voidable transfer law including, but not limited to, California Civil Code § 3439 *et seq*.

### FIRST CLAIM FOR RELIEF

(Avoidance of Fraudulent/Voidable Transfers Pursuant to 11 U.S.C. § 544(b)(1); Cal. Code §§ 3439.04(a)(2), 3439.05 Against All Defendants)

- 24. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 24 as though set forth in full.
- 25. The Transfers were transfers of the Debtor's property made within four (4) years of the Petition Date to or for the benefit of the Defendants in the amounts set forth in Exhibit 1.
  - 26. When the Transfers were made, the Debtor was aware of its mounting debts.
- 27. The Debtor received less than reasonably equivalent value in exchange for the Transfers and in fact received no value for the Transfers.
- 28. The Debtor was insolvent when the Transfers were made or it became insolvent as a result of the Transfers.
- 29. Indeed, when the Debtor filed its bankruptcy petition shortly after the Transfers were made, it had accumulated over \$8.7 million in unpaid liabilities and its attempted liquidation of its real estate assets yielded less than half a million dollars in net proceeds. Indeed, the entire period during which the Debtor was operating, the Debtor owed far more to creditors, secured and unsecured, than it ever owned in valuable property. This is because Debtor tended to acquire real properties using secured loans, including purchase money loans, but also was incurring substantial unsecured liabilities to acquire these properties. During its operations, Debtor was unable to return payment of principal to its unsecured lenders, and defaulted in payment of its secured loans. Debtor also owned no other assets of any substantial value beyond real estate and cars, both

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of the Transfers.

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The Transfers are avoidable pursuant to 11 U.S.C. § 548(a)(1)(B).

it would incur, debts beyond its ability to pay as such debts matured.

Debtor was insolvent when the Transfers were made or became insolvent as a result

At the time the Transfers were made, the Debtor intended to incur, or believed that

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#### THIRD CLAIM FOR RELIEF

(Avoidance of Fraudulent/Voidable Transfers Pursuant to 11 U.S.C. § 544(b)(1); Cal. Code §§ 3439.04(a)(1) Against All Defendants)

- 41. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 40 as though set forth in full.
- 42. The California's Uniform Voidable Transactions Act provides, inter alia, that a transfer is fraudulent as to a creditor, regardless of when the creditor's claim arose, if the Debtor made the transfer with the actual intent to hinder, delay, or defraud any creditor. (See California Civil Code §3439.04 California Civil Code §3439.04(a)(1).)
- 43. As long as the debtor had the requisite fraudulent intent, a transfer will qualify as an actually fraudulent transfer, even if reasonably equivalent value was provided. Because §3439.04(a)(1)'s language regarding the debtor's state of mind is in the disjunctive, intent to defraud a creditor is not required. Either an intent to hinder or an intent to delay a creditor will also suffice.
- 44. The Transfers were transfers of the Debtor's property made within four (4) years of the Petition Date. The Transfers were made on the dates and in the amounts reflected on Exhibit 1.
- 45. The Transfers were all made for the benefit of the Fosters, collectively or individually, who are both statutory insiders of the Debtor.
- 46. The Transfers were made with the actual intent to hinder, delay or defraud Debtor's legitimate creditors and were payments made improperly to enrich the Fosters at the expense of the Debtor's legitimate creditors.
- 47. The Fosters, both authorized users of and signatories on the Debtor's EWB Account, habitually used the Debtor's funds and property to fund their lavish lifestyle, causing the Debtor to pay hundreds of thousands of dollars toward their own personal credit card liabilities or for their own enrichment or that of their non-Debtor entities, including by making the Transfers. By way of example of the pattern and practice of the Fosters' usage of the Debtor's funds and property, they caused the Debtor to buy personal jewelry for Mrs. Foster, paid their child's private school tuition with Debtor's funds, paid for personal vehicles, and received well over a million

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FIFTH CLAIM FOR RELIEF

(Recovery of Voidable Transfers Pursuant to 11 U.S.C. § 550 Against All Defendants)

Plaintiff realleges and incorporates herein by reference each and every allegation

Case	8:24-ap-01163-SC	Doc 1 Filed 12/19/24 Entered 12/19/24 15:52:10 Desc Main Document Page 9 of 13				
1	57. Based	on the foregoing claims for relief and the facts set forth herein, the Transfers				
2	are all recoverable by	Plaintiff.				
3	58. The Tr	ansfers are recoverable from the Defendants pursuant to 11 U.S.C. § 550(a)				
4	or Plaintiff is entitled to a judgment requiring payment by Defendants to Plaintiff of the value of					
5	the Transfers.					
6		SIXTH CLAIM FOR RELIEF				
7	(Disallowand	ee of Claims Pursuant to 11 U.S.C. § 502 Against All Defendants)				
8	59. Plainti	ff realleges and incorporates herein by reference each and every allegation				
9	contained in paragrap	hs 1 through 58 as though set forth in full.				
10	60. Defend	lants have not paid the amount of the Transfers, or any part of them, nor				
11	turned over such property, for which Defendants are liable under 11 U.S.C. §550.					
12	61. Pursua	nt to 11 U.S.C. § 502(d), any and all claims of Defendants and/or their				
13	assignees against the Debtor's estate and/or liquidating trust must be disallowed until such time as					
14	Defendants pay to Plaintiff an amount equal to the aggregate amount of all of the Transfers, plus					
15	interest thereon and costs.					
16	62. Pursua	nt to 11 U.S.C. § 502(j), any and all claims of Defendants and/or their				
17	assignees against the	Debtor's estate previously allowed must be reconsidered and disallowed				
18	until such time as Defendants pay to Plaintiff an amount equal to the aggregate amount of all of					
19	the Transfers which h	ave been avoided under 11 US.C. § 550.				
20		<u>PRAYER</u>				
21	WHEREFOR	E, Plaintiff prays for judgment against all Defendants as follows:				
22	ON THE FIL	RST, SECOND, THIRD AND FOURTH CLAIMS FOR RELIEF				
23	1. For jud	Igment avoiding the Transfers.				
24		ON THE FIFTH CLAIM FOR RELIEF				
25	2. For rec	eovery of the Transfers or their value in the form of a money judgment.				
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Case	8:24-ap-011	63-SC	Doc 1 Main Doc		4 Enter age 10 of	red 12/19/24 15:52:10 13	Desc
1			<u>ON</u>	THE SIXTH (	CLAIM F	FOR RELIEF	
2	3.	Judgm	nent disallov	wing, in accord	lance with	n 11 U.S.C. §§ 502(d) an	d (j), any claims
3	held by Defer	ndants a	nd/or their	assignees until	Defendan	nts satisfy the judgment	granted in this
4	action.						
5			<u>(</u>	ON ALL CLA	IMS FOR	R RELIEF	
6	4.	For int	terest as per	rmitted by law	from the	date of the Transfers;	
7	5.	For co	osts of suit i	ncurred herein,	, including	g, without limitation, att	orneys' fees; and
8	6.	For su	ich other an	d further relief	as the Co	ourt deems just and propo	er.
9	D ( 1 D	1 10	2024		n	46 H 1 *44 H	
10	Dated: Dece	mber 19	9, 2024		_	ectfully submitted by,	
11					GOE	FORSYTHE & HODO	GES LLP
12					By: /s/	/Robert P. Goe	
13					Ro	obert P. Goe narity J. Manee	
14					Co	ounsel to Official Comm nsecured Creditors	ittee of
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# EXHIBIT 1

# EXHIBIT 1

In Re: 2nd Chance Investment Group, LLC

Case Number: 8:22-bk-12142-SC

Charge/Purchase related to www.realestateinvestor.com Source: American Express Statements for Account xx2-91007

Date Range: June 11, 2021 to October 12, 2022

Account Name	Date	Amount	Statement Description
2nd Chance Investment	9/15/2021		WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
	9/16/2021	•	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment 2nd Chance Investment			WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	9/23/2021	•	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
	9/30/2021	,	
2nd Chance Investment	10/7/2021	•	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	10/14/2021		WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	10/15/2021	,	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	10/21/2021		WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	10/28/2021	,	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	11/5/2021		WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	11/11/2021	,	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	11/15/2021		WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	11/18/2021	•	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	11/26/2021		WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	12/2/2021	,	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	12/9/2021		WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	12/15/2021	1,997.00	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	12/16/2021	972.90	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	12/23/2021	228.50	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	12/30/2021	120.50	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	1/15/2022	1,997.00	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	2/15/2022	1,497.00	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	3/15/2022	1,497.00	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	4/14/2022	538.00	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	4/15/2022	1,997.00	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	4/21/2022	538.00	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	4/28/2022	538.00	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	5/5/2022	537.50	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	5/12/2022	538.00	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	5/15/2022	1,997.00	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	5/19/2022	538.00	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	5/26/2022	538.00	WWW.REALESTATEINVESTOR DANVILLE CA+18006933708
2nd Chance Investment	6/3/2021	1398.85	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	4/8/2022	1997	REALESTATEINVESTOR.COM DANVILLE CA+18006933708
2nd Chance Investment	9/9/2021	2730.39	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	9/2/2021	2736.61	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	8/26/2021	2359.14	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	8/19/2021	2415.82	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	8/15/2021	1997	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	8/12/2021	2306.08	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	8/5/2021	2681.78	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	7/29/2021	2357.88	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	7/22/2021	2419.88	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	7/15/2021	1997	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	7/15/2021	2319.38	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	7/8/2021	2924.64	REALESTATEINVESTOR.COM TAMPA FL+19253195688

EXHIBIT 1 Page 1 of 2

In Re: 2nd Chance Investment Group, LLC

Case Number: 8:22-bk-12142-SC

Charge/Purchase related to www.realestateinvestor.com Source: American Express Statements for Account xx2-91007

Date Range: June 11, 2021 to October 12, 2022

Account Name	Date	Amount	Statement Description
2nd Chance Investment	5/20/2021	1389.6	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	7/2/2021	1401.12	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	7/1/2021	919.2	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	6/24/2021	1475.5	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	6/17/2021	1287.3	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	6/15/2021	1997	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	6/10/2021	2040.81	REALESTATEINVESTOR.COM TAMPA FL+19253195688
2nd Chance Investment	5/27/2021	1489.55	REALESTATEINVESTOR.COM TAMPA FL+19253195688
	Total	99,188.72	

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